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2002 MAR 20 P 3: 06

CHIEF  
COUNSEL

March 19, 2002

Heidi L. Coleman, Esquire  
Office of Chief Counsel  
National Highway Traffic Safety Administration  
Room 5219  
400 Seventh Street, SW  
Washington, DC. 20590

NHTSA-01-9630-40

NHTSA-01-9628-41

Re: Request for Confidential Treatment of Information Submitted by J.K. Technologies, L.L.C.

Dear Ms. Coleman:

Almost a year ago, J. K. Technologies, L.L.C. ("JKT") submitted a petition for eligibility determination for the 2001 Ferrari 360 and 550 to the Administrator, National Highway Traffic Safety Administration "NHTSA", Department of Transportation "DOT", Office of Vehicle Safety Compliance "OVSC." In support of the petition we have submitted all sorts of engineering data for our confidential modifications to the OVSC.

On February 12, 2002 we opened our facility for NHTSA Engineers, representatives from the Legal Department, OVSC Staff Members and others to view our confidential modifications and methods. These representatives observed, asked questions, took notes, and pictures of our confidential modifications and further, took these notes and photographs away from our facility. We believe these notes and photographs as well as the content of our meetings to be confidential as they provide a template of our confidential modifications previously submitted and granted confidentiality by your office. Our Counsel, Matthew Sturtz, advised all parties at the end of the nearly five hour visit, that the issues discussed, pictures taken and materials provided were to be considered confidential until your office made its final determination.

We would like copies of all of the photographs taken at our facility. This may consist of but is not limited to photographs of the Ferrari's, parts of any kind, confidential modifications and our facility. We would like copies of any other information learned, including notes or drawings taken by any "appointed scribes" or notes and drawings generated after the meetings in regards to our meeting or

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modifications. We would also like these to be granted confidentiality because release of this information would cause us substantial competitive harm.

During our meetings here in our facility, the engineers asked a number of questions regarding our confidential modifications. We would like to ask that our attached response in total, including engineering data, drawings, photographs, and cover letter be granted confidentiality as it is a virtual "blue print" of our modifications and observed methodologies which in total are keys to our entire operation.

The confidential Appendix marked, "Ferrari answer 3" consists of a compilation of the parts (including the part names and numbers) and engineering drawings and blue prints necessary to bring certain non-compliant 2001 Ferrari 360 **and** 550 models into compliance with the Federal Motor Vehicle Safety Standards ("FMVSS"). As set forth in the attached Certificate, JKT maintains the confidentiality of the compilation of parts and engineering in the Appendix since it is a "recipe" or "blue print" for bring the vehicles into compliance with the applicable FMVSS. JKT has never made a public disclosure of this compilation of parts and engineering needed for attempts to modify the 2001 Ferrari 360 and 550 models to meet the applicable FMVSS. Further, this information is of a kind that JKT does not customarily, indeed if ever, disclose to the public.

The research and development involved in obtaining the information has taken over 8 months and thousands of hours to compile and confirm in testing. It has also been extremely expensive because we had to obtain U.S. and European vehicles for study. In addition to the engineering required, OVSC also required crash data to be submitted. We were told verbally by Ken Weinstein, that crash data would not be required in addition to our engineering and certification, but could not obtain anything in writing. We are hereby submitting crash data. We now have a substantial investment in data that we believe to be unnecessary as the engineering and statements provided certified that the modifications met the standards. Further, OVSC in its investigative powers, has the right to purchase one of our cars or, pay us for the testing and has not taken either path, even when we offered to do the testing on their behalf. The vehicle and testing costs combined for this one submission are in excess of \$250,000 and that is for one standard, a 2.5 mile an hour bumper standard.

Release of any of our information including parts lists, modifications **or** methodologies would cause substantial competitive harm to the position of JKT because it would give our direct competitors a recipe for the modification of the non-compliant 2001 360 and 550 models for sales in the US market. Further, release of the information would eliminate much of the time, effort and expense that is associated with bringing the cars into compliance.

We do realize that certain part numbers may have entered the public domain, some in the US and some in Europe. However, as a compilation, the "Appendix"

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has great competitive value and its release would result in substantial harm to our organization. In addition, the engineering sections that are included with this "Appendix" have only been confirmed through destructive testing. Release of these blue prints and data would also cause substantial harm to our organization as we believe in order to obtain the confirming data on bumper testing alone, another entity would have to spend in excess of a quarter of a million dollars.

We are requesting that: the compilation of information in the appendix, any proprietary data, photographs, drawings, engineering, data, notes, inter-company parts lists and engineering drawings along with the calculations supporting these submissions; meetings, observed methodologies, meeting notes, photographs or any other type of data generated be granted confidential treatment for a period of (5) years. A five-year grant of confidential treatment will preclude the use of the information by JKT's direct competitors during the information's useful life. We also request that any associated technical data, inter-company parts lists, photographs, engineering calculations and supporting data submitted on a vehicle by vehicle basis, be granted "confidential treatment" for a period of five (5) years. This will prevent our competitors from gaining access to our engineering data for it's useful life.

**We** also request this confidential treatment based on prior determinations. On September 7, 2001 Ferrari North America, Inc. ("FNA"), requested, as an importer, and was granted, confidentiality of their "Appendix" that "consists of a compilation of the parts.. .necessary to bring.. .automobiles into compliance with FMVSS", based on the fact that it would cause "substantial harm to the competitive position' of FNA because it would give FNA's competitors a recipe for attempting to modify non-compliant Ferrari vehicles for sale in the US market." In their request they relied on Critical Mass Enerav Project V. NRC, 975 F.2d 871, 879(D.C. CIR. 1992), National Parks & Conservative Ass'n V. Morton, 498 F. 2d 765, 770 (D.C. CIR, 1974), Public Citizen Health Research Grp. V. FDA, 185 F. 3d 898,905 (D.C. Cir. 1999), among others. We concur with FNA's position on confidentiality and assert the same as further support for our request.

Since we are also an importer of the vehicles, and are much smaller in size and financial scope than FNA, we believe that our Appendix should for the same reasons be granted confidential treatment under Exemption 4 (but not limited to exception 4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) for a period of 5 years.

It should also be noted that Europa International was granted confidential treatment of its modifications of the Mercedes Benz 463 Chassis and Motorex was granted confidential treatment of its modifications of the Skyline GTR for a period of years as protection from competitive harm.

To reiterate, in accordance with 512.4 Section(b)(3) we submit the following information in support of our request.

- (i) The information supplied has been generated by research and design work developed internally at J.K. Technologies, L.L.C. The "Appendix" specifically, and any further information required on a vehicle by vehicle basis, that would be supplied to OVSC, including parts lists, photographs, engineering calculations and supporting data that have been generated because of extensive and very expensive research by JKT. Release of this data would result in substantial competitive harm to our organization as it would give our direct competitors a "recipe" for the modifications necessary to bring the 2001 Ferrari 360 and 550 models into compliance with all the FMVSS. Additionally, our engineering would provide insiaht for other importers who may not have considered technologies developed by our oruanization and release of this information mav compromise our ability to market our intellectual property by allowing it to be in the public domain.
- (ii) This compilation of information in total has not been disclosed or otherwise made available to any other persons, company or organization other than the provider.
- (iii) To the best of our knowledge, the information has only been disclosed in parts to the engineering staff within our organization and has not been made available except in part to the appropriate DOT/OVSC officials in order to ascertain compliance with certain FMVSS.
- (iv) This compilation of information has never appeared publicly.
- (v) We would also like to request that confidentiality be granted based on a prior determination you have made regarding Ferrari's "Request for Confidentiality" that was granted for a similar compilation of their "parts list". Release of our data would also constitute a "recipe" for modifications.

On September 7, 2001 Ferrari North America, Inc. ("FNA"), requested, as an importer, and was granted, confidentiality of their "Appendix" that "consists of a compilation of the parts...necessary to bring...automobiles into compliance with FMVSS", based on the fact that it would cause "substantial harm to the competitive position' of **FNA** because it would give FNA's competitors a recipe for attempting to modify non- compliant Ferrari vehicles for sale in the US market." In their request they relied on Critical Mass Energy Project V. NRC, 975 F.2d 871, 879(D.C. CIR. 1992), National Parks & Conservative Ass'n V. Morton, 498 F. 2d 765, 770 (D.C. CIR, 1974), Public Citizen Health Research Grp. V. FDA, 185 F. 3d 898,905 (D.C. Cir. 1999), among others.

Since we are also an importer of the vehicles, and are much smaller in size and financial scope than FNA, we believe that our Appendix should

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for the same reasons be granted confidential treatment under Exemption 4 (but not limited to exemption 4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) for a period of 5 years.( Please see your letter of September 20,2001 to Erika Z. Jones )


- (vi) Disclosure of this information would cause substantial competitive harm because both direct and indirect competitors in the industry would have a blueprint of the engineering required to bring the vehicles into conformity with the FMVSS without having to develop any systems of their own. The designs and "systems research" developed by JKT constitutes a major part of the intellectual and engineering property of the company as a whole. Hundreds of thousands of dollars have been spent on the research and development in the area of crash testing and certification by our company. Whereas other "importers" may not have EVER crash tested a vehicle. Rather they rely on other to spend the money on research and development. Publishing the data we deem to be confidential would lead to loss of any competitive advantage and would immediately eliminate the considerable financial investment that has been made to develop our systems. **As** a small business, the impact would be profound.
- (vii) No comment at this time.
- (viii) No comment at this time.
- (ix) The period of five (5) years would allow recuperation of our research and development/engineering costs associated with this project. Lastly, it **is** a reasonable amount of time that would not infringe upon freedom of trade.

In accordance with 514.(e) please find attached a certification in the form set out in Appendix A to part 512.

Thank you for your kind attention to this request. Please call me at the above referenced telephone numbers if you have any further questions.

Sincerely,

J.K. TECHNOLOGIES, L.L.C.

A handwritten signature in black ink, appearing to read 'Jonathan Weisheit', is written over a horizontal line. The signature is stylized with a large loop at the end.

By:Jonathan Weisheit, Project Engineering